

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIVEN D. BUNDY,

Defendant.

Case No.: 2:16-cr-46-GMN-PAL

ORDER

Pending before the Court is the Report and Recommendation (ECF No. 1173) entered by Magistrate Judge Peggy A. Leen on December 20, 2016, denying Defendant Cliven D. Bundy's ("Defendant's") Motion to Dismiss (ECF No. 892). Defendant timely filed his Objection (ECF No. 1226), to which the Government filed a Response (ECF No. 1323).¹

I. BACKGROUND

On March 2, 2016, a federal grand jury sitting in the District of Nevada returned a Superseding Indictment charging Defendant and eighteen other co-defendants with sixteen counts related to a confrontation occurring on April 12, 2014, with Bureau of Land Management ("BLM") Officers in Bunkerville, Nevada. (ECF No. 27).

As detailed thoroughly in Judge Leen's Report and Recommendation, Defendant has been involved in civil litigation with the federal government for the past two decades. (R. & R.

¹ On January 5, 2017, Defendants Ryan W. Payne and Ammon E. Bundy each filed Motions for Joinder (ECF Nos. 1235, 1238) to Defendant's Objection (ECF No. 1226). Additionally, on January 9, 2017, Defendants Steven A. Stewart and Richard R. Lovelien each filed Motions for Joinder (ECF Nos. 1258, 1260) to Defendant's Objection (ECF No. 1226). Pursuant to District of Nevada Local Rule IB 3-2(a), any objections to a magistrate judge's report and recommendation must be filed within 14 days of service. None of these Motions for Joinder were filed within the 14-day deadline to be considered as objections to Judge Leen's Report and Recommendation. Accordingly, the Court denies these Motions for Joinder (ECF Nos. 1235, 1238, 1258, 1260) as untimely.

1 1:27–2:21, ECF No. 1173). Specifically, the Court previously found, and the Ninth Circuit
2 affirmed, that Defendant engaged in unauthorized and unlawful grazing of his cattle on
3 property owned by the United States. (*See Order, United States v. Bundy*, Case No. 2:98-cv-
4 0531-JBR-RJJ, 1998 U.S. Dist. LEXIS 23835 (D. Nev. Nov. 3, 1998), ECF No. 19), *aff’d* by
5 178 F.3d 1301 (9th Cir. 1999).

6 In his Motion to Dismiss, Defendant seeks to dismiss his case because “the Federal
7 Government does not have any ownership interest in the Bundy Ranch,² depriving this court of
8 jurisdiction over the subject matter of the dispute.” (Mot. to Dismiss 2:11–14, ECF No. 892).
9 Further, Defendant asserts that because the Federal Government does not own the land in
10 question, “any activity of Federal Agents on [the land in question] during the time period
11 described within the indictments was illegal, unlawful, and was an aggressive trespass onto
12 lands owned by the people of Nevada.” (*Id.* 2:14–19). As such, because Counts 1(d), 1(e), 1(f),
13 2, and 4–15 all require proof that federal officers were engaged in lawful duties, these Counts
14 should be dismissed for failure to state a claim.³ (*Id.* 2:23–3:11). In her Report and
15 Recommendation, Judge Leen rejected these arguments and recommended denial of the
16 Motion. (R. & R. 11:24–12:2, 18:14–26).

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20 ² As Judge Leen noted in her Report and Recommendation, “Bundy Ranch” is not a clearly defined term. (*See* R.
21 & R. 9:8–19, ECF No. 1173). This term does not refer to the land actually owned by Defendant, but rather, as
22 used by Defendant, “Bundy Ranch” includes “land within the borders of the State of Nevada that is allegedly
23 owned in fee simple by the Federal Government and controlled by the same with plenary power under Article IV
24 of the United States Constitution.” (*Id.* (citing Mot. to Dismiss 2:7–11)). As such, the Court will refer to this
25 area as “the land in question.”

³ Defendant cites “Rule 12(b)(5)” as the basis for “dismissal as a matter of law for failure to state actionable
claims.” (*Id.* 13:22–24). This citation likely refers to the Federal Rules of Civil Procedure; however, in the
Federal Rules of Criminal Procedure, such a basis is found under Rule 12(b)(3)(B)(v): “The following defenses,
objections, and requests must be raised by pretrial motion if the basis for the motion is then reasonably available
and the motion can be determined without a trial on the merits: . . . a defect in the indictment or information,
including: . . . failure to state an offense.”

1 **II. LEGAL STANDARD**

2 A party may file specific written objections to the findings and recommendations of a
 3 United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B);
 4 D. Nev. R. IB 3-2. Upon the filing of such objections, the Court must make a *de novo*
 5 determination of those portions of the Report to which objections are made. *Id.* The Court may
 6 accept, reject, or modify, in whole or in part, the findings or recommendations of the Magistrate
 7 Judge. 28 U.S.C. § 636(b)(1); D. Nev. IB 3-2(b).

8 **III. DISCUSSION**

9 Defendant asserts several objections to Judge Leen’s Report and Recommendation
 10 denying his Motion to Dismiss. (Obj., ECF No. 1226). Defendant argues that Judge Leen
 11 “erred in finding that the land-ownership question is foreclosed by existing law on the subject.”
 12 (*Id.* 4:10–12). Specifically, Defendant contends that “while these courts have several times
 13 expressed the conclusion that the Federal Government absolutely owns all of these lands, that
 14 these expressions could not even be categorized as findings of law, but rather were restatements
 15 of the unexamined self-serving assumptions of a party to the dispute (the Federal
 16 Government).” (*Id.* 3:24–4:1). Defendant’s related objections, including Judge Leen’s alleged
 17 error in finding that 18 U.S.C. § 3231 conveys jurisdiction, stem from Defendant’s general
 18 premise that “the land is not owned by the United States.” (*See id.* 11:11 – 26). Defendant also
 19 asserts that Judge Leen erred by “implying that the unilateral stipulation of a former attorney
 20 general of Nevada in a collateral case acts as a concession in future cases.” (*Id.* 4:13–14). As
 21 such, these objections do not present new or rebuttal legal arguments, but rather request that
 22 this Court reject Judge Leen’s determinations.

23 Having reviewed the record in this case *de novo*, the Court agrees with the analysis and
 24 findings of Judge Leen in her Report and Recommendation (ECF No. 1173) denying the
 25 Motion to Dismiss and incorporates them by reference in this order. The Court agrees that

1 Defendant's arguments against the federal government's land ownership in Nevada are
2 foreclosed by binding precedent. As explained by Judge Leen: "For more than two decades,
3 [Defendant] has argued that the federal government does not have an ownership interest in any
4 land in Nevada. However, this argument has been soundly and consistently rejected by every
5 court to consider the issue." (R. & R. 11:25–27).

6 As in his original motion, Defendant's Objection attempts to distinguish *United States v.*
7 *Gardner*, 107 F.3d 1314 (9th Cir. 1997).⁴ He argues that "Gardner apparently did not argue
8 that the Federal Government obtained less-than absolute title to land in question through the
9 treaty with Mexico, whereas [Defendant] specifically argued that the treaty never conferred
10 such absolute ownership." (Obj. 6:15–18). However, the Gardners and Defendant are actually
11 making the same argument, as both assert that "the unappropriated lands in the state of Nevada
12 . . . [are] not territory or other property belonging to the United States." *Gardner*, 107 F.3d at
13 1317. In *Gardner*, the Ninth Circuit analyzed the 1848 Treaty of Guadalupe Hidalgo in
14 conjunction with the question of the "United States' title to federal land in Nevada" to find that
15 the "unappropriated public lands in Nevada" have been "the property of the United States"
16 since 1848. *Id.* at 1317–18. Indeed, the *Gardner* Court explained that "under the Property
17 Clause, the United States can administer its federal lands any way it chooses . . . [and] the
18 federal government was the initial owner of the land from which the state of Nevada was later
19 carved." *Id.* at 1318. Thus, the Court agrees with Judge Leen that *Gardner* dictates that the
20 unappropriated public lands in Nevada are the property of the United States.

21 As Judge Leen explained, this conclusion is further supported by the Court's prior
22 determinations in Defendant's civil cases. (R. & R. 14:4–10). In the first Order granting
23 Summary Judgment to the United States in *United States v. Bundy*, the Court cited *Gardner* for

24 ⁴ In Defendant's Motion to Dismiss, he stated: "Defendant is aware that a similar argument was raised in
25 [*Gardner*] wherein it was rejected by the Ninth Circuit. Defendant argues both that *Gardner* was wrongly
decided and that it is distinguishable from the argument raised here." (Mot. to Dismiss 19:22–20:2).

1 this same proposition: “The public lands in Nevada are the property of the United States
2 because the United States has held title to those public lands since 1848, when Mexico ceded
3 the land to the United States.” (Order, *United States v. Bundy*, Case No. 2:98-cv-0531-JBR-RJJ,
4 1998 U.S. Dist. LEXIS 23835, at *14 (D. Nev. Nov. 3, 1998), ECF No. 19), *aff’d* by 178 F.3d
5 1301 (9th Cir. 1999). Therein, the Court rejected Defendant’s argument that “the federal
6 government cannot have authority over lands ‘inside an admitted state,’” *id.* at *12–13, and
7 found that the Court had jurisdiction over the case.

8 Additionally, Judge Leen found that the Court had subject matter jurisdiction over the
9 crimes charged in the Superseding Indictment under 18 U.S.C. § 3231, which gives the United
10 States district courts “original jurisdiction . . . of all offenses against the laws of the United
11 States.” 18 U.S.C. § 3231. Defendant’s objection contends that merely conveying jurisdiction
12 is not sufficient. Specifically, he asserts that the Superseding Indictment “failed to state
13 actionable claims” because “there must be at minimum a theoretical possibility of proving an
14 offense to keep the defendant in court for trial.” (Obj. 11:15–19). Defendant’s underlying
15 premise as to why the crimes fail as a matter of law, however, remains that “the land is not
16 owned by the United States.” (*Id.* 11:19–27). Because the Court finds that the land in question
17 is owned by the United States, this objection necessarily fails.⁵

18 Accordingly, Defendant’s Objection (ECF No. 1226) is overruled. The Court accepts
19 and adopts Judge Leen’s Report and Recommendation (ECF No. 1173) to the extent that it is
20 not inconsistent with this opinion and denies Defendant’s Motion to Dismiss (ECF No. 892).

23 ⁵ Additionally, because the Court otherwise finds that the federal government owns the land in question, giving
24 this Court subject matter jurisdiction, the Court need not address Defendant’s objection regarding the effect of
25 the attorney general’s stipulation in *United States v. Nye Cty.*, 920 F. Supp. 1108, 1110 (D. Nev. 1996).

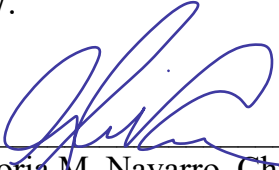
1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that the Report and Recommendation (ECF No. 1173) is
3 **ACCEPTED and ADOPTED in full.**

4 **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss (ECF No. 892) is
5 **DENIED.**

6 **IT IS FURTHER ORDERED** that the Motions for Joinder (ECF Nos. 1235, 1238,
7 1258, 1260) are **DENIED.**

8 **DATED** this 18 day of January, 2017.

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12 Gloria M. Navarro, Chief Judge
13 United States District Court
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